



Board of Adjustment
PO Box 120
Town of Fremont, New Hampshire 03044
Minutes of January 22, 2008
Approved March 25, 2008

Members present: Co-Chairman Brett Hunter, Members Doug Andrew, Jack Baker, Scott Boisvert and Land Use AA/recording Secretary Meredith Bolduc.

Mr. Hunter called the meeting to order at 7:47 p.m. then called the roll.

It was agreed to go directly to the scheduled Public Hearing and address prior minutes and other Board business after the hearing has been closed.

Case # 08-001
DELPAR, LLC
Raymond Dellovo
MAP 7 LOT 070
48 Riverside Drive

Present: Owner Raymond Dellovo, Mark Parella, Timothy Lavelle, Erica Washburn, Mr. & Mrs. Robert Premont

Mr. Hunter opened this Public Hearing at 7:45 p.m. and read the Public Notice of the Hearing as follows:

In accordance with NH RSA 675:7, you are hereby notified that the Fremont Zoning Board of Adjustment will hold a Public Hearing at 7:30 pm on Tuesday January 22, 2008 at the Fremont Town Hall, downstairs Land Use meeting room, for DELPAR, LLC, Raymond Dellovo, Map 7 Lot 070, 48 Riverside Drive, Fremont NH.

The applicant is seeking an Equitable Waiver of Dimensional Requirements to the terms of Article IV Section 1 of the Fremont Zoning Ordinance to be allowed to maintain the location of an existing deck closer than twenty (20) feet from a rear lot line and existing steps closer than thirty (30) feet to a street property line.

You are invited to appear in person or by counsel and state reasons why the request should or should not be granted. Written comments will be accepted up until the date of the hearing.

Mr. Hunter explained the purpose of the Board and the procedure for An Equitable Waiver of Dimensional Requirements. He read Article IV Section 1 of the Fremont Zoning Ordinance.

Mr. Hunter noted that this hearing was noticed on December 27, 2007 at the Fremont Post Office and Fremont Town Hall and in the January 4, 2008 edition of the Rockingham News. The applicant and all abutters were notified via certified mail on December 28, 2007, a second notification was sent to abutter Rossop on January 10, 2008 due to a wrong address, and all returns have been received. The application package included: 6 copies of drawn plan, proper check amount, a current list of abutters, letter of intent, a December 18, 2007 cover letter of intent letter from owners, and a December 18, 2007 Code Enforcement letter of denial stating that the applicants proposal would require an Equitable Waiver of Dimensional Requirements from Fremont Zoning Ordinance Article V Section 1. It was agreed that the application was complete.

Mr. Hunter stated that there is not a full Board present and gave the applicant the option of waiting for a full Board for a decision. Mr. Dellovo stated that he would like to proceed with the four members present.

Comment Sheets were received from the following:

Code Enforcement Officer: *Upon the completion and submission of the "certified as-built" performed by this new owner to properly locate the structures, it was noted that while the building itself maintains compliance to the full setback requirements as provided on the building permit, the front entry landing and the rear do not. The new owner has shortened the rear deck by cutting off all of the joists overhang back to the main carrying beam. This provided additional setback in the rear. He added that he feels the setbacks as provided in the "certified as-built" are adequate.*

Fire Chief: *No comment*

Planning Board: *No comment*

Conservation Commission: *No comment*

Health Officer: *No problem*

The Board reviewed the submitted plot plan #4098-70 drawn by RSL Layout & Design and dated September 27, 2007. The plan showed the entire .12 acre property as well as the location of the existing house with a deck on the south side of the house 18' from the side lot line where 20' is required, and steps on the north side of the house 26' from the Riverside Drive street property line where 30' is required. All other setback requirements appeared to be met. The Board viewed some pictures of the property that were provided by the Building Inspector. It was agreed that a site visit is not necessary.

Mr. Dellovo stated that he recently purchased the home without knowing about any violations. He contacted the Building Inspector who noticed that the front steps and the back deck were not in compliance with the setback requirements so he has filed for an Equitable Waiver of Dimensional Requirements. In answer to questions Mr. Boisvert, Mr. Dellovo stated that this was a foreclosure property, is a brand new single family structure and the house was not occupied before he purchased it. He noted that there are a lot of other building additions in that area that have not been properly setback.

During a discussion Mr. Boisvert suggested that perhaps the equitable waiver should be somewhat more than requested to allow for a margin of error. The Members and Mr. Dellovo agreed.

Mr. Hunter asked if the public had any questions and there were none.

Mr. Dellovo addressed the four elements of an Equitable Waiver of Dimensional Requirements (in italics) and the Board voted as follows:

(a) The violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value; *I purchased the property and the Building Inspector found this problem.*

Board's vote:

Mr. Baker	Yes
Mr. Andrew	Yes
Mr. Boisvert	Yes
Mr. Hunter	Yes

(b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner, owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority; *See 2-a. I have had no knowledge of this violation.*

Board's vote:

Mr. Baker	Yes
Mr. Andrew	Yes
Mr. Boisvert	Yes
Mr. Hunter	Yes

3. That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; *In seeking an Equitable Waiver of 2' on the south side for a deck and a waiver of 4' on the north side for front steps does not encroach on any ones property.*

Board's vote:

Mr. Baker	Yes
Mr. Andrew	Yes
Mr. Boisvert	Yes
Mr. Hunter	Yes

(d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected. *There would be no public benefit in removal of the deck and front steps and the cost would be substantial.*

Board's vote:

Mr. Baker	Yes
Mr. Andrew	Yes
Mr. Boisvert	Yes
Mr. Hunter	Yes

Mr. Baker asked about the extra work that Mr. Dellovo did. Mr. Dellovo answered that he cut off some of the overhang of the deck to make it more compliant to the setback rules.

After careful consideration and review by the Board, Mr. Boisvert made the motion that, based on the information presented and the results of the Boards vote on the four points of criteria that must be met for approval of an Equitable Waiver of Dimensional Requirements, and pursuant to plan #4098-70 drawn by RSL Layout & Design and dated September 27, 2007, the Fremont Zoning Board of Adjustment grant an Equitable Waiver of Dimensional Requirement from Article IV Section 1 of the Fremont Zoning Ordinance to DELPAR, LLC, Raymond Dellovo, to allow *an existing deck on the south side of the house to remain in its' current location closer than twenty (20) feet, but no closer than sixteen (16) feet from a rear lot line; and existing steps on the north side of the house to remain in their current location closer than thirty (30) feet, but no closer than twenty five (25) feet, to a street property line on property located at Map 7 Lot 070, 48 Riverside with the following condition.*

Condition:

1. That the Equitable Waiver of Dimensional Requirements granted herein pertains to the existing deck and steps only and does not extend to any additional improvements on the property.

Motion seconded by Mr. Baker with unanimous favorable vote.

The applicant was instructed that there is a 30 day appeal period and that the notice of decision of this action will be recorded at the Rockingham Registry of Deeds and will referenced to the property deed. The applicant agreed to submit payment for the recording fees.

Mr. Baker made the motion to close this Public Hearing at 8:13 p.m.

Motion seconded by Mr. Boisvert with unanimous favorable vote.

Case # 08-002

Ioannis Kakouris / Robert Premont

MAP 3 LOT 119

431 Main Street

Present: Representing Surveyor Timothy Lavelle of Lavelle Associates, Mr. & Mrs. Robert Premont, Erica Washburn abutter Helmut Milde

Mr. Hunter opened this Public Hearing at 8:15 pm and read the Public Notice of the Hearing as follows:

In accordance with NH RSA 675:7, you are hereby notified that the Fremont Zoning Board of Adjustment will hold a Public Hearing at 8:00 pm on Tuesday January 22, 2008 at the Fremont Town Hall, downstairs Land Use meeting room, for Iaonnis Kakouris, owner and Robert Premont, applicant, for property located at Map 3 Lot 119, 431 Main Street, Fremont NH.

The owner and applicant are seeking:

- 1. A Special Exception to the terms of Article IX Section H of the Fremont Zoning Ordinance to allow an existing access way previously approved as a septic/leaching field access way, which passes through a watershed protection district, to include use as a residential driveway. There will be no further filling of wetland.*
- 2. An Area Variance to the terms of Article IV Section 2 of the Fremont Zoning Ordinance to allow a building lot to be created with no frontage on a Federal, State or Town highway.*

Mr. Hunter explained the purpose of the Board. He stated that this hearing was noticed on December 27, 2007 at the Fremont Post Office and Fremont Town Hall and in the January 4, 2008 edition of the Rockingham News. The applicant and all abutters were notified via certified mail on December 28, 2007 and all returns have been received except for that of the Fremont School District. The application package included: 6 copies of drawn plan, proper check amount, a current list of abutters, letter of intent, letter from owners, a June 26, 2007 letter from owner Ioannis Kakouris authorizing James Lavelle Associates to represent him for this project, and a December 18, 2007 Code Enforcement Officer letter of denial stating that the applicants proposal would be in non-compliance to Fremont Zoning Ordinance Article IV Section 2. It was noted that an additional abutter needed to be notified so there is an additional \$11.00 due. It was agreed that the application was complete.

Mr. Hunter stated that as a result of the public notice of this hearing to all Boards, the Conservation Commission advised the Board in their comment sheet that they have asked for legal counsel relative to the Conservation Easement that is attached to the property. The Board reviewed the January 7, 2008 Conservation Commission minutes that note that there is some confusion as to the actual easement area. The ZBA Members viewed the easement document which identifies the easement property as "Property as more specifically described in Schedule A attached" and Schedule A appears to say that the whole parcel is the easement property as it reads "A certain parcel of land being known as Lot 119 on Plan entitled "Lot Merger Plan for the Fremont Pizzeria, 431 Main Street in Fremont, New Hampshire, Tax Map 3, Lot 119 dated May 12, 2004 and recorded at the Rockingham County Registry of Deeds as Plan No. D-31624." The approved plan shows a 250' Conservation Easement along the Exeter River. There is a use limitation that states "the easement property shall not be further subdivided".

Mr. Hunter stated that Town Counsel John Ryan advised that in order to change the language of the Conservation Easement deed and for a new amended /corrected easement deed to be drawn, both parties, being the Fremont Conservation Commission and the property owner, need to meet and agree on the intent of the original easement and the new language.

Mr. Hunter stated that since the Zoning Board of Adjustment cannot act in contradiction to the present Conservation Easement deed the case should be continued to a date certain until the easement deed has been clarified and recorded.

Mr. Lavelle stated that he feels the intent of the easement is clear that the 250' along the river is the easement property and they are perfectly willing to meet with the Conservation Commission to clear up the confusion.

At 8:25 pm Mr. Boisvert made the motion to continue this Public Hearing to 7:30 pm on February 26, 2008 to allow time for the owner or his agents to meet with the Conservation Commission in order to

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obtain a new amended /corrected easement deed that does not conflict with the Fremont Zoning Ordinances.

Motion seconded by Mr. Baker with unanimous favorable vote.

MINUTES

Mr. Boisvert made the motion to accept the minutes of the December 18, 2007 meeting as written.

Motion seconded by Mr. Hunter with unanimous favorable vote.

CORRESPONDENCE

There was no incoming correspondence.

Next meeting: scheduled for February 26, 2008.

At 9:10 pm Mr. Boisvert made the motion to adjourn.

Motion seconded by Mr. Baker with unanimous favorable vote.

Respectfully submitted,

Meredith Bolduc, recording secretary
